



Via Email

Scott Peterson
Executive Director
Checks and Balances Project
1820 N. Fort Myer Drive, Suite 510
Arlington, VA 22209

October 26, 2017

Jeremiah J. Silkowski
CEO and President
SQN Capital Corporation
100 Wall Street, 28th Floor
New York, NY 10005

CC:

The Honorable Rhonda K. Schmidlein
Chairman
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

The Honorable David S. Johanson
Vice Chairman
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

The Honorable Irving A. Williamson
Commissioner
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

The Honorable Meredith M. Broadbent
Commissioner
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Dear Mr. Silkowski:

My name is Scott Peterson. I am executive director of [Checks and Balances Project](http://checksandbalancesproject.org) (C&BP), a public watchdog that focuses on issues relating to the sustainable economy.

In April of this year, your fund, SQN Capital Management, effectively demanded \$50 million to recoup its investment in Suniva Inc. by filing a highly damaging complaint with the U.S. International Trade Commission (ITC).

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Suniva Inc.'s complaint, TA-201-075, has been pushed by a narrative based on the premise of saving American solar manufacturing jobs.

However, C&BP has reviewed documents, including law firm billing statements, that appear to show SQN Capital has had no intention to help Suniva Inc. restart domestic operations and instead has taken steps to prepare for a Chapter 7 Bankruptcy filing.

The billing statements to Suniva can be found in Exhibit 5 ("July 2017 Timesheets of Kirkpatrick Townsend and July 2017 Timesheets of Mayer Brown, Suniva Bankruptcy Court Proceedings, Case I7-10837-KG, U.S. Bankruptcy Court, District of Delaware") of a public document submitted to the ITC on September 27, 2016. The document can be found on the ITC Electronic Document Information System website.

The ability to save American solar jobs is predicated on the ability of Suniva Inc. to emerge from Chapter 11 bankruptcy after getting a significant "remedy" from the government.

Files from lawyers working for Suniva Inc. and SQN show you have been actively considering moving to a Chapter 7 bankruptcy – which would permanently shut down Suniva Inc. operations. Here are four excerpts from the law firms's billing records:

07/24/17	McConkey, Matthew		3.25
	Conference call re: 201 with SQN and Bankruptcy lawyers (including case impact if convert to Chapter 7). Finalizing 3rd submission to bankruptcy court. Attention to SEIA lobbying and PR actions. Attention to getting access to useable QR aggregations. Directions to MB team re: billing for Lobbying and PR actions. Discussion with W. Payne re: responding to SEIA actions to get Hill letter. Details of ITC hearing and location to M. Card.		

07/24/2017	CMB	Telephone call to M. McConkey regarding trade case and conversion of bankruptcy case (.3); prepare memorandum to D. Baker and T. Meyers regarding same (.1); conference call with M. McConkey, M. Card, J. Silkowski, and J. Modak regarding trade case and conversion of bankruptcy (.4); prepare memorandum to D. Baker regarding same (.5); correspondence from and to T. Meyers regarding same (.1); telephone call from T. Meyers regarding same (.1).	1.50	1,050.00
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07/31/2017	CMB	Correspondence from and to R. Gayda and M. McConkey regarding call to update creditors committee regarding trade case (.1); review correspondence from M. McConkey and T. Meyers regarding trade case script re bankruptcy issues (.2).	0.30	210.00
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Mayer Brown LLP

Invoice No: 35361488
Suniva Inc.
17536109 201

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McConkey, Matthew

<u>Date</u>	<u>Timekeeper Name</u>	<u>DESCRIPTION OF LEGAL SERVICES</u>	<u>Hours</u>
		ITC Hearing to speak. Emails re: Prosperous America and possibility of them being a surrogate. Preparing and circulating updated 201 budget (including PR work). Preparing 3rd invoice for Bankruptcy Court. Search for Beamreach QR response.	
07/20/17	Payne, Warren S.	Scheduling congressional meetings.	0.25

Each one of these actions was taken *while the case was before the ITC*.

In addition, a [letter signed by you](#) on May 3, 2017, and sent to the China Chamber of Commerce for Import & Export of Machinery & Electronic ([Smirnow Law document, Exhibit 4](#)), appears to indicate that SQN has no desire or intention of restarting domestic production.

However, Mayer Brown LLP, which billed Suniva for PR work related to this case, [released a widely criticized report](#) that claims domestic production would increase. This appears to contradict your letter.

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Your firm filed its complaint with the ITC in the name of saving American manufacturing jobs. While this complaint was being argued on those grounds, lawyers effectively working for you were actively considering permanent bankruptcy from which there is no reemergence and no reemployment of Americans.

Setting aside the estimation that this complaint could, according to the Solar Energy Industries Association, cost 88,000 Americans their jobs, we ask you the following questions:

- What is the status of consideration for permanent Chapter 7 bankruptcy for Suniva Inc.?
- What assurance can you give ITC and the public that provided your remedy, you will not file for Chapter 7 bankruptcy and eliminate American jobs?
- Apart from these billing statements and your letter, did you at any time inform the commission that was considering rescuing your company that permanently dissolving Suniva Inc. was under active consideration?

We ask you to clarify your intentions while the ITC commissioners finish deciding how much of a “remedy” you should get from taxpayers.

We look forward to your prompt reply.

Should you need to contact me, you can email scott@checksandbalancesproject.org or call me at 703-722-6688.

Regards,

A handwritten signature in black ink, appearing to read "Scott Peterson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Scott Peterson
Executive Director

Attach: Smirnow Law document 9.27.16